

THE STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S REVISED TRANSCRIPT OF PUBLIC HEARING

Phoenix, Arizona

October 20, 2005

9:30 a.m.

(Copy)

Reported By:

Angela Furniss Miller, RPR  
Certified Reporter (AZ 50127)

A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN  
ELECTIONS COMMISSION, convened at 9:30 a.m. on October  
20, 2005, at the State of Arizona, Clean Elections  
Commission, 1616 W. Adams, Conference Room, Phoenix,  
Arizona, in the presence of the following Board Members:

Ms. Marcia Busching, Phoenix, Chairperson

Ms. Kathleen Detrick, Tucson

Ms. Tracey Bardorf, Scottsdale

Mr. Gary Scaramazzo, Page (Teleconference)

Ms. Emila Jolley, Yuma

OTHERS PRESENT:

Mr. Todd Lang, Executive Director

Ms. Colleen McGee, Fiscal Service Manager

Ms. Genevra Richardson, Campaign Finance  
Manager

Ms. Autumn Southard, Voter Education Manager

Ms. Diana Varela, Assistant Attorney General

Ms. Jessica Funkhouser, Assistant Attorney  
General

Ms. Nancy Read, Secretary of State's Office

Ms. Barbara Lubin, Clean Elections Institute

Mr. Paul Peterson, OMA

Mr. Robbie Sherwood, Arizona Republic

Mr. Christian Palmer, Arizona Capitol Times

## P R O C E E D I N G

CHAIRPERSON BUSCHING: I will call this meeting to order. This is the Citizens Clean Election Commission at 1616 West Adams, Suite 110, Phoenix, Arizona 85007. Today is Thursday, October 20th, 2005 and it's 9:30 a.m.

As an announcement, the Commission may vote to go into executive session which will not be open to the public, for any item listed on the agenda for obtaining legal advice. All matters on the agenda may be discussed, considered, and are subject to action by the Commission.

I've already called the meeting to order. The second item on the agenda is approval of the October 4th, 2005 Commission meeting minutes. And I should note for the record that Commissioner Scaramazzo is appearing by telephone and all the other Commissioners are present.

So, turning to the minutes. We had received in our packet a set of minutes and today in person there's a revised set of minutes. And I know people have not had a chance to see the revised set of minutes.

There was one correction that needed to be made that was not caught the first time around, and that was

1 on Page 14, Line 33-2 I guess it is, it says, "how do ya  
2 address that issue?" And it should be obviously "you,"  
3 Y-O-U.

4 Are there any other additions or corrections to  
5 the minutes of October 4th?

6 COMMISSIONER BARDORF: Madame Chair, I have  
7 typographical things. Page 28 Line 24, I think the "do"  
8 should be D-U-E. And on Page 30 Line 19 --

9 CHAIRPERSON BUSCHING: I'm sorry. On page --  
10 this is a little confusing because there's page numbers  
11 on the bottom and there's page numbers on the side too,  
12 so.

13 COMMISSIONER BARDORF: I don't have any page  
14 numbers on the bottom.

15 CHAIRPERSON BUSCHING: Oh, you're not looking  
16 at the, you know --

17 COMMISSIONER BARDORF: Oh, that will change  
18 things. Then I need some time to find where these are.

19 CHAIRPERSON BUSCHING: Actually, having now  
20 looked at it, I think they translate here. The number  
21 on the side translated to the numbers that are on the  
22 prior version.

23 COMMISSIONER BARDORF: So then it would be Page  
24 30, but it's Page 13 of the new ones, Line 19. I  
25 believe it was, "You had prior to the hearing the checks

1 that these are based on."

2 Let's see. Sorry.

3 CHAIRPERSON BUSCHING: I'm a little bit  
4 confused. What did you say that that should be?

5 COMMISSIONER BARDORF: I think the sentence is  
6 missing a couple words. "You had prior to the hearing  
7 the checks that these are based on."

8 CHAIRPERSON BUSCHING: Okay.

9 COMMISSIONER BARDORF: And then on Page 47 Line  
10 19 the word is "constrained" not "restrained". And on  
11 Page 58 Line 3, the word is "allude" not "elude".  
12 Homonym trap. Page 72 Line 9, it's "manner" not  
13 "matter". And I think that's all I have.

14 CHAIRPERSON BUSCHING: Okay. Any other  
15 additions or corrections to the October 4th minutes?

16 If not, the Chair will entertain a  
17 motion.

18 COMMISSIONER DETRICK: Madame Chair.

19 CHAIRPERSON BUSCHING: Commissioner Detrick.

20 COMMISSIONER DETRICK: I move we approve the  
21 minutes of October 4th with the corrections that have  
22 been made.

23 CHAIRPERSON BUSCHING: Is there a second?

24 COMMISSIONER BARDORF: Second.

25 CHAIRPERSON BUSCHING: It's been moved by

1 Commissioner Detrick and seconded by Commissioner  
2 Bardorf that we approve the minutes of October 4th, 2005  
3 with the corrections noted.

4 All in favors say "aye".

5 (Chorus of ayes.)

6 CHAIRPERSON BUSCHING: Opposed, nay?

7 Chair votes aye. Motion carries.

8 Item No. 3, Executive Director's report. Mr.  
9 Lang.

10 MR. LANG: Thank you, Madame Chair. Good  
11 morning Commissioners. You have my report in front of  
12 you. I've continued to meet with members of the  
13 legislature. They've been very receptive and I've  
14 enjoyed those meetings a great deal even when they take  
15 me to task. I found it very helpful and worthwhile. I  
16 just want to let you know that I certainly appreciate  
17 the opportunity to meet with them and they've given me  
18 more meetings. I have many scheduled for the next  
19 couple of weeks.

20 Just as a follow up, Paula Ortiz is out of the  
21 office. She's had surgery. She's fine, but she will be  
22 out for the rest of this week and probably all of next  
23 week. And I can tell you, it's brutal not having her  
24 here. We really miss her. She does a ton as you know.  
25 And Colleen McGee is trying to wear -- how many hats are

1 you wearing Colleen? Are you here?

2 MS. MCGEE: Four.

3 MR. LANG: So Colleen McGee is doing her best  
4 to do both her own job and Paula's job as well as the  
5 other job openings we currently have. So, thank you  
6 Colleen.

7 We have 25 candidates right now, and they're  
8 all eager.

9 Voter registration. I won't go into  
10 unnecessary detail of what's been going on. I will  
11 update the debate sponsor applications. Autumn is now  
12 telling me we now have four applications, which is good.  
13 She did send out a little e-mail and it worked. So,  
14 thank you for that, Autumn. And she did another  
15 training last night which was quite eventful I hear.  
16 But that's par for the course.

17 Our five-year review, Genevra is cranking on  
18 that. She's burning the midnight oil and doing a great  
19 job. She and I are going to be meeting with Dean Wright  
20 again, our consultant. And that's quite a -- quite a  
21 project, but Genevra is working on a number of rules  
22 issues and has done a great job.

23 Staffing. The big news of course and I've told  
24 you that Autumn Southard is leaving, despite my offer to  
25 double her salary. She is leaving to take a job with

1 the Republican Caucus of Pennsylvania State House of  
2 Representatives. So, congratulations, Autumn.

3 MS. SOUTHARD: Thank you.

4 MR. LANG: And she will really be missed. She  
5 does a wonderful job and I hope everything works out to  
6 replace her. I do question the wisdom, Ms. Bardorf and  
7 I were talking about this, of leaving now when the  
8 weather is finally getting nice.

9 MS. SOUTHARD: I know.

10 CHAIRPERSON BUSCHING: Or even leaving at all.

11 COMMISSIONER BARDORF: Put it on her review,  
12 displays lack of judgment.

13 MR. LANG: Yeah, yeah, her final review.  
14 Really.

15 As for the deputy director position, I've not  
16 yet made a decision. I've completed the first round of  
17 interviews. I will probably do a brief second round.  
18 And there's lots of good folks and it's been a tougher  
19 decision than I expected.

20 As for the administrative assistant position,  
21 Paula and Colleen were working hard on that before she  
22 got sick. That sort of slowed down a little because  
23 Paula is out. But Colleen is continuing to process it.  
24 And I think Colleen said they will interview 10  
25 applicants out of 150 applications they received. So



1 that is also progressing.

2 In enforcement, you see the numbers there. So  
3 really, that -- that's my report unless you have some  
4 questions.

5 CHAIRPERSON BUSCHING: Do any members of the  
6 Commission have any questions?

7 I have a couple. Under your -- or with your  
8 meetings with members of the legislature, what, if  
9 anything, do you expect to come of those?

10 MR. LANG: Well, I have no specific agenda  
11 except to learn from them what their concerns are and  
12 that sort of thing. Obviously, there have been  
13 discussions about proposed changes and ideas. I know a  
14 couple of legislators are considering some legislation.  
15 So that's one possibility.

16 Another consideration is I may come up with  
17 some rules for the commissioners to consider in the next  
18 few months depending on the reaction of the legislature.

19 CHAIRPERSON BUSCHING: Okay. And with the  
20 five-year rule review, will we need to take any action  
21 on that?

22 MR. LANG: No.

23 CHAIRPERSON BUSCHING: Okay.

24 MR. LANG: I don't think so. I'm ready to be  
25 corrected by counsel if that's not the case.

1 MS. VARELA: I don't know.

2 CHAIRPERSON BUSCHING: Okay.

3 MR. LANG: I don't think so, but if we need to  
4 -- we can call a special meeting, but I don't anticipate  
5 that being necessary.

6 CHAIRPERSON BUSCHING: Okay. Thank you.

7 COMMISSIONER JOLLEY: I have a question.

8 CHAIRPERSON BUSCHING: Yes, Commissioner  
9 Jolley.

10 COMMISSIONER JOLLEY: On the five-year review,  
11 when is the deadline date?

12 MR. LANG: October 31st.

13 CHAIRPERSON BUSCHING: Any other questions for  
14 the Executive Director?

15 If not, we'll go on to Item No. 4, discussion  
16 and possible action on authorization pursuant to  
17 R2-20-211 of Executive Director to take depositions,  
18 administer oaths, and issue subpoenas.

19 Mr. Lang.

20 MR. LANG: Thank you, Madame Chair,  
21 commissioners. As you know, Rule 211 permits the  
22 Commission to authorize the Executive Director or  
23 Assistant Attorney General to issue subpoenas -- issue  
24 subpoena duces tecum and document production, we can  
25 also do depositions in the -- like under Part B. And to

1 do depositions actually under Part C of that rule.

2 Colleen Connor did on occasion use that rule to  
3 find out more information and I'd be interested in doing  
4 the same thing in order to facilitate investigations.  
5 And, obviously, my preference is whenever possible for  
6 Diana Varela, our Assistant Attorney General, to do  
7 these things. She's our attorney. She's the expert.  
8 But on occasion, it may be useful for me to be able to  
9 do it as well to sort of supplement her efforts and  
10 that's the foundation for the request.

11 CHAIRPERSON BUSCHING: Is there any member of  
12 the public wishing to speak to this matter?

13 Okay. Any questions by members of the  
14 Commission?

15 COMMISSIONER BARDORF: I guess my question is,  
16 so are you asking us to sort of as a general matter  
17 authorize you to invoke this as necessary, not for  
18 anything specific at this time?

19 MR. LANG: I have no specific use at this time,  
20 no.

21 CHAIRPERSON BUSCHING: Any other questions?

22 COMMISSIONER DETRICK: Madame Chair.

23 CHAIRPERSON BUSCHING: Commissioner Detrick.

24 COMMISSIONER DETRICK: I would move we  
25 authorize the Executive Director to take depositions,

1 administer oaths, and issue subpoenas in accordance with  
2 R2-20-211 as needed.

3 CHAIRPERSON BUSCHING: Okay. Is there a  
4 second?

5 COMMISSIONER JOLLEY: I will second it.

6 CHAIRPERSON BUSCHING: It's been moved by  
7 Commissioner Detrick and seconded by Commissioner Jolley  
8 that we authorize the Executive Director to take  
9 depositions, administer oaths, and issue subpoenas in  
10 accordance with R2-20-211. Any further discussion?

11 If not, the Chair will call for the question,  
12 all in favor say "aye".

13 (Chorus of ayes.)

14 CHAIRPERSON BUSCHING: Opposed, nay?

15 Chair votes aye. Motion carries.

16 Item No. 5, proposed Commission meeting dates  
17 for January through June 2006.

18 Mr. Lang, anything you have to say on  
19 this?

20 MR. LANG: If the Commissioners -- I mean the  
21 Commissioners have the dates before them. They're  
22 January 26, February 23rd, March 30th, April 27th, May  
23 25th, and June 29th. These are all the last Thursday of  
24 the month.

25 I did not check to make sure May 25th -- I

1 don't think that is not -- I'm getting a head shake, it  
2 is not Memorial Day weekend, so we're good there.

3 CHAIRPERSON BUSCHING: Okay. Have people had  
4 an opportunity to check their calendars with the  
5 exception of Commissioner Detrick?

6 COMMISSIONER DETRICK: I have two of them.

7 CHAIRPERSON BUSCHING: True. The Chair will  
8 entertain a motion.

9 COMMISSIONER BARDORF: I move that we approve  
10 these 2006 Commission meeting dates.

11 CHAIRPERSON BUSCHING: Is there a second?

12 COMMISSIONER JOLLEY: I'll second it.

13 CHAIRPERSON BUSCHING: It's been moved by  
14 Commissioner Bardorf and seconded by Commissioner Jolley  
15 that we approve the proposed 2006 Commission meeting  
16 dates for the first half of the year. All in favor say  
17 "aye".

18 (Chorus of ayes.)

19 CHAIRPERSON BUSCHING: Opposed, nay?

20 Chair votes aye. Motion carries. Put  
21 them on your calendars.

22 COMMISSIONER BARDORF: Madame Chair, I know  
23 that we had had some talk in the past about having  
24 additional dates as we get closer to the election or  
25 into the election period. Perhaps you might want to

1 consider starting to get those on people's calendars.  
 2 You know, maybe you can go today and take a look and see  
 3 what's going to work for you and get some proposed dates  
 4 going since it's going to get hectic.

5 CHAIRPERSON BUSCHING: The only thing I would  
 6 say is that we will have a new commissioner, and so --

7 COMMISSIONER BARDORF: True.

8 CHAIRPERSON BUSCHING: So.

9 COMMISSIONER BARDORF: That's true.

10 CHAIRPERSON BUSCHING: I agree with you. We  
 11 definitely will need additional meeting dates, but I  
 12 don't know how soon we'll need them.

13 COMMISSIONER BARDORF: Okay.

14 CHAIRPERSON BUSCHING: All right. Item No. 6,  
 15 discussion and possible action on the following  
 16 enforcement matters.

17 First one, MUR 04-0043, Peggy Toomey Hammann,  
 18 probable cause recommendation. Ms. Richardson.

19 MS. RICHARDSON: Good morning, Commissioners.  
 20 Mr. Lemon is in North Carolina right now checking on the  
 21 damage of his house from the hurricane, so he asked me  
 22 to present these for you today.

23 The first one that we have is Peggy Toomey  
 24 Hammann, probable cause recommendation. Mr. Lemon  
 25 recommended the Commission find probable cause for

1 violating ARS 16-941(A)(4), the general elections  
2 spending limit, and ARS 16-948(D), paying fines and  
3 penalties with Clean Election funds and failing to  
4 comply with Title 16, Chapter 6 of the act.

5         On your probable cause recommendation, you will  
6 see that the Respondent wrote two checks that were  
7 returned due to insufficient funds in her bank account.  
8 One was to KJJJ on October 28th of 2004 for \$152. And  
9 the other was written to herself on September 2nd of  
10 2004 for reimbursement of mileage in the amount of \$50.  
11 And this indicates that she overspent her general  
12 election spending limit.

13         On October 12th of 2004, Respondent wrote a  
14 check to the Secretary of State in the amount of \$50 for  
15 a late filing fee, and this is a violation of 16-948(D)  
16 where monies shall be used to pay fines or civil  
17 penalties.

18         On November 1st of 2004, the Respondent  
19 received matching funds in the amount of \$528.34.  
20 Neither did she report receipt of the matching fund and  
21 how the money was spent which is in violation of ARS  
22 16-913 and Rule AAC R2-20-219.

23         Mr. Lemon recommends the Commission find  
24 probable cause that there was a violation and assess a  
25 civil penalty pursuant to ARS 16-942(A). He recommends

1 a penalty of \$2,020 for both of the insufficient funds  
2 checks, which is 10 times the amount of the expenditure  
3 that exceeded that limit. He recommends a penalty of  
4 \$500 for the payment of the late filing payment which is  
5 10 times the amount of the expenditure of \$50. Pursuant  
6 to 16-942(B) and R2-20-222, Mr. Lemon recommends a  
7 penalty of \$50 for knowing and willful violation of  
8 reporting requirement for the matching funds.

9 In total, Mr. Lemon recommends \$17,520 in civil  
10 penalties.

11 CHAIRPERSON BUSCHING: Okay. Thank you.

12 MS. RICHARDSON: And we might add too, we have  
13 provided Ms. Hammann opportunities to respond and we  
14 haven't received one response from her.

15 CHAIRPERSON BUSCHING: And Ms. Hammann was the  
16 person that had questions -- there were issues raised  
17 about her address as well?

18 MS. RICHARDSON: Yes, and we've referred that  
19 matter -- because it's outside of our jurisdiction -- we  
20 referred that matter to, I believe, the Attorney  
21 General's Office or Secretary of State's Office.

22 CHAIRPERSON BUSCHING: Okay.

23 MS. RICHARDSON: That was part of the reason  
24 for the recommendation I believe when it came before the  
25 Commission for the first time.



1 CHAIRPERSON BUSCHING: Thank you. Any  
2 questions of Ms. Richardson?

3 COMMISSIONER DETRICK: I have one question.  
4 You say that you provided her an opportunity to respond  
5 and she hasn't responded?

6 MS. RICHARDSON: Right.

7 COMMISSIONER DETRICK: Was that done verbally  
8 or in writing?

9 MS. RICHARDSON: We follow the normal procedure  
10 for our enforcement matters. We submit everything to  
11 her in writing and offer her a certain amount of time to  
12 respond to the complaint, the order, and probable cause  
13 recommendation and go through these steps.

14 And also if the Commission remembers, we did an  
15 audit for her reports and she was allowed time to  
16 respond to those audits as well and we did not receive a  
17 response from her. I spoke to the auditors and they  
18 said they didn't receive a response from her either,  
19 so --

20 CHAIRPERSON BUSCHING: Do we know that she's  
21 receiving this information?

22 MS. RICHARDSON: We do. We require signatures  
23 for all of the Fed Ex documents that we send to her  
24 address. I've spoken to her over the phone to confirm  
25 the address is correct and it seems to me she's

1 receiving those documents.

2 COMMISSIONER DETRICK: So, she hasn't indicated  
3 at all why she is not responding?

4 MS. RICHARDSON: No, she has not.

5 CHAIRPERSON BUSCHING: Any other questions of  
6 Mrs. Richardson?

7 Anyone from the public wishing to speak to this  
8 matter?

9 CHAIRPERSON BUSCHING: Okay. Any discussion  
10 and motion by the Commission?

11 COMMISSIONER DETRICK: Madame Chair.

12 CHAIRPERSON BUSCHING: Commissioner Detrick.

13 COMMISSIONER DETRICK: I can't understand why  
14 someone would not at least respond and tell you why they  
15 weren't responding or why they felt that the report was  
16 in error. And I agree with Mr. Lemon's recommendation  
17 that this appears to be a willful -- knowing and willful  
18 violation.

19 So, therefore, I move that we find probable  
20 cause exists to believe that the violation occurred and  
21 that we accept the recommendation of the external  
22 investigative consultant Mr. Lemon, and we assess  
23 penalties in the amount of \$17,520.

24 CHAIRPERSON BUSCHING: Is there a second?

25 COMMISSIONER JOLLEY: I will second that.

1 CHAIRPERSON BUSCHING: It's been moved by  
2 Commissioner Detrick and seconded by Commissioner Jolley  
3 that we accept the recommendation of the external  
4 investigative consultant and assess a civil penalty in  
5 the amount of \$17,520. Further discussion?

6 If not. The Chair will call for the question,  
7 all in favor say "aye".

8 (Chorus of ayes.)

9 CHAIRPERSON BUSCHING: Opposed, nay?

10 Chair votes aye. Motion carries.

11 MUR 04-0066, Cameron Udall, dismissal  
12 recommendation. Ms. Richardson.

13 MS. RICHARDSON: Commissioners, this complaint  
14 was filed by Patrick Meyers for failure to identify  
15 expenditures to the campaign consultant on her campaign  
16 finance report. If you remember, the Commission issued  
17 a reason to believe recommendation to require compliance  
18 at the last meeting. The Respondent received the  
19 necessary documents from the vendor to itemize her  
20 expenditures and filed an amended campaign finance  
21 report which is attached. And Mr. Lemon recommends  
22 dismissing this complaint and terminating this  
23 proceeding.

24 CHAIRPERSON BUSCHING: Any questions of Ms.  
25 Richardson?

1 Any members of the public wishing to speak to  
2 this matter?

3 Okay. Any comments by the members of the  
4 Commission?

5 None, the Chair will entertain a motion.

6 COMMISSIONER JOLLEY: Madame Chair.

7 CHAIRPERSON BUSCHING: Commissioner Jolley.

8 COMMISSIONER JOLLEY: Yes, in the matter of MUR  
9 04-0066 in reference to Mr. Cameron Udall --

10 CHAIRPERSON BUSCHING: Ms.

11 COMMISSIONER JOLLEY: Ms. Excuse me. Ms.  
12 Cameron Udall, excuse me.

13 -- that the matter be terminated according to  
14 the external investigative consultant's report, Mr. Gene  
15 Lemon.

16 COMMISSIONER SCARAMAZZO: I'll second that.

17 CHAIRPERSON BUSCHING: It's been moved by  
18 Commissioner Jolley and seconded by Commissioner  
19 Scaramazzo that the recommendation of the external  
20 investigative consultant be adopted and that the  
21 proceedings in MUR 04-0066 against Cameron Udall be  
22 terminated. Any further discussion?

23 In not, the Chair will call for the question,  
24 all in favor say "aye".

25 (Chorus of ayes.)

CHAIRPERSON BUSCHING: Opposed, nay?

The Chair votes aye. Motion carries.

Next item, Jim Torgeson, discussion and possible approval of Pre-General and Post-General Final Audit Reports.

MS. RICHARDSON: Commissioners, these just need your approval. The auditors did receive documentation from Mr. Torgeson. That was a concern in his preliminary audit for backup documentation and receipts for certain reimbursements. The auditor said they received those documents and made the necessary changes in the audit report.

Mr. Torgeson also edited his campaign finance report. The campaign finance report indicated \$6,000 which is why we turned him over to audit. He amended his report. It has a zero balance now.

I want to point out, the auditors had to use the original campaign finance report to reconcile all the expenditures and the final report. So the amended report is not reflected in the final report.

CHAIRPERSON BUSCHING: And as a result of these audit reports -- well, let me back up and ask, is this the last audit to be done now?

MS. RICHARDSON: This is the last audit for 2004.

1 CHAIRPERSON BUSCHING: Yeah. Okay. Any other  
2 questions of Ms. Richardson?

3 Any member of the public wishing to speak to  
4 this matter?

5 Any discussions by members of the  
6 Commission?

7 COMMISSIONER JOLLEY: Madame Chair.

8 CHAIRPERSON BUSCHING: Commissioner Jolley.

9 COMMISSIONER JOLLEY: So, we will be approving  
10 what the auditor Miller Allen has submitted to us, but  
11 then will we get a final report that shows all this is  
12 corrected?

13 MS. RICHARDSON: This is reflected in the  
14 report before you, so this needs to be -- this is the  
15 final proposal. Once the Commission approves it, it  
16 will be finalized and sent to Mr. Torgeson as final.

17 COMMISSIONER JOLLEY: Okay.

18 CHAIRPERSON BUSCHING: Okay. Any other  
19 questions or comments?

20 If not, the Chair will entertain a  
21 motion.

22 COMMISSIONER DETRICK: Madame Chair.

23 CHAIRPERSON BUSCHING: Commissioner Detrick.

24 COMMISSIONER DETRICK: I move we approve the  
25 Pre-General and Post-General Final Audit reports for Jim

1 Torgeson.

2 CHAIRPERSON BUSCHING: Is there a second?

3 COMMISSIONER JOLLEY: I will second it.

4 CHAIRPERSON BUSCHING: It's been moved by  
5 Commissioner Detrick and seconded by Commissioner Jolley  
6 that we accept the Pre-General and Post-General Final  
7 Audit reports for Jim Torgeson. Further discussion?

8 If not, the Chair will call for the question,  
9 all in favor say "aye".

10 (Chorus of ayes.)

11 CHAIRPERSON BUSCHING: Opposed, nay?

12 Chair votes aye. Motion carries.

13 Item D, MUR 04-0020, David Gowan, discussion  
14 and possible action on outcome of informal settlement  
15 between Commission representative Tracey Bardorf and  
16 David Gowan. Ms. Bardorf.

17 COMMISSIONER BARDORF: Unfortunately, Mr. Gowan  
18 had a family emergency on the date we were scheduled to  
19 have our settlement conference so we had to postpone.  
20 And, obviously, with the agreement that he was  
21 continuing to waive the deadline that's triggered by the  
22 statute. And apparently he left a message or his  
23 attorney left a message for Ms. Varela suggesting  
24 November 4th. Is that right?

25 November 4th is the new date. The

1 Commissioners' meetings fall on November 3rd, and then  
2 the next meeting is actually after his scheduled hearing  
3 which is currently scheduled for November 17.

4 So, I believe -- are you free on November 4th?

5 MS. VARELA: Yeah.

6 COMMISSIONER BARDORF: And I am as well. If we  
7 do that, we would need to have some sort of meeting  
8 before November 17th so that in the event there is a  
9 settlement reached, we won't have to send him through  
10 the administrative process. It will be too late to  
11 settle it once that gets under way.

12 So, we need to either commit to making -- I  
13 guess, get another meeting on the calendar in there or  
14 we can see if we can find another date with him. He's  
15 in Sierra Vista -- or Tucson. He was going to be in  
16 Phoenix on the 4th, so that's where that date came from.

17 CHAIRPERSON BUSCHING: Okay. Anyone here from  
18 the public wishing to speak to the David Gowan matter?

19 Okay. Any discussion?

20 COMMISSIONER DETRICK: Madame Chair.

21 CHAIRPERSON BUSCHING: Commissioner Detrick.

22 COMMISSIONER DETRICK: If we have a special  
23 meeting, when would that have to be held after the  
24 conference with him on the 3rd [sic] -- how soon before  
25 the 17th?



1 MS. VARELA: It would have to -- it could be  
2 held at any time. We're going to have to ask him to  
3 waive -- I think the settlement conference has to happen  
4 within 15 days of the administrative hearing, so we  
5 would have to ask him to waive the 15 days anyway. And  
6 they've indicated -- his attorney is indicating they're  
7 willing to waive whatever they need to and the November  
8 4th date is his proposed date.

9 So, I think the sooner, the better. If, as  
10 commissioner Bardorf has indicated, if there's a  
11 settlement, we would like to let everyone know they can  
12 free up that time. If there's not a settlement,  
13 everybody will need to prepare for the hearing.

14 CHAIRPERSON BUSCHING: My own personal  
15 preference would be to figure out a way to have them  
16 meet sooner. But, you know, I certainly defer to  
17 whatever works for everyone.

18 COMMISSIONER DETRICK: Well, Madame Chair, I'm  
19 going to have an increasingly difficult time doing a  
20 special meeting, but obviously I will do whatever. You  
21 know, I will be meeting by phone and probably carve out  
22 time.

23 CHAIRPERSON BUSCHING: And if it's after  
24 November 4th, I will as well, so --

25 COMMISSIONER BARDORF: So, should we then go

1 back to Mr. Smith who is his attorney and suggest an  
2 earlier date and then barring any earlier date  
3 available, go ahead with the 4th and we'll expect to  
4 have a meeting that's the least inconvenient? Okay.  
5 Then we'll do that.

6 CHAIRPERSON BUSCHING: Okay. So, there's no  
7 action that needs to be taken then today.

8 COMMISSIONER BARDORF: No.

9 CHAIRPERSON BUSCHING: Okay. All right then.  
10 Item E, MUR 04-0077, Jeff Dial, reason to believe  
11 recommendation.

12 MR. LANG: Madame Chair, Commissioners, Mr.  
13 Dial due to an error in procedure by Federal Express  
14 didn't receive the documents -- or we have no proof that  
15 he received the documents in a timely manner. So, we  
16 have given him until Monday, this coming Monday, to  
17 respond. So, this will be tabled until the next  
18 meeting.

19 CHAIRPERSON BUSCHING: Okay. All right. So  
20 there's no action required for that.

21 I'm down to Item 7, call for public comment.  
22 This is the time for consideration and discussion of  
23 comments and complaints from the public. Action taken  
24 as a result of public comment will be limited to  
25 directing staff to study the matter, or rescheduling the

1 matter for further consideration and decision at a later  
2 date, or responding to criticism.

3 Are there any members of the public that wish  
4 to speak?

5 I don't see any. In which case, we're at Item  
6 No. 8, adjournment. May I have a motion?

7 COMMISSIONER BARDORF: Madame Chair, I move  
8 that we adjourn this meeting.

9 CHAIRPERSON BUSCHING: Is there a second?

10 COMMISSIONER DETRICK: I second.

11 CHAIRPERSON BUSCHING: It's been moved by  
12 Commissioner Bardorf and seconded by Commissioner  
13 Detrick that we adjourn the meeting.

14 All in favor say "aye".

15 (Chorus of ayes.)

16 CHAIRPERSON BUSCHING: Opposed, nay?

17 The Chair votes aye. The motion carries.

18  
19 (Whereupon the proceeding concludes at 10:05  
20 a.m.)  
21  
22  
23  
24  
25

C E R T I F I C A T E.

I, Angela Furniss Miller, Certified Reporter,  
do hereby certify that the foregoing pages numbered 1  
through 27, inclusive, constitute a full and accurate  
printed record of my stenographic notes taken at said  
time and place, all done to the best of my skill and  
ability.

That the revisions were made as directed and  
approved by Commission vote at the November 3rd, 2005  
meeting.

DATED, at Phoenix, this 3rd day of November,  
2005.

Angela Furniss Miller, RPR  
Certified Reporter (AZ50127)